

Remarks/Arguments:

1. The Examiner rejected original claims 1 – 4 under 35 USC 103(a) as being unpatentable over Read (U.S. patent no. 5,917,416) in view of Finnegan et al. (U.S. patent no. 4,482,785) and further in view of Boyd (U.S. patent no. 4,144,532) and Akisawa (JP 2001154676). Applicant traverses the Examiner's rejections for the following reasons.

2. Applicant noted that in rejecting original claims 1 – 4 the Examiner combined the capillary bulb thermostat of Finnegan with the temperature alarm system of Read to render original (and now canceled) claims 1 – 4 obvious and therefore unpatentable.

Read specifically recites that his temperature-sensing module is a digital thermometer module known as type no. MB-TMB880EXL. This temperature-sensing module is integrated into the system 10 in very specific detail.

On the other hand, the capillary bulb thermostat mentioned by the Examiner as disclosed in Finnegan is actually a temperature-sensing bulb connected to a capillary tube and thence to a diaphragm or bellows for activation of contacts. Moreover, this mention of the temperature-sensing bulb is by way of referring to numerous types of thermal sensors. There are no figures in Finnegan that actually show this temperature-sensing bulb integrated with the refrigeration monitor system. Finnegan simply points out that one alternative thermal sensor is a temperature-sensing bulb. It should also be noted that Read doesn't disclose the use of a diaphragm or bellows in his temperature alarm system, and thus the means of electrical interconnection is left unclear if not unknown.

3. It is well known that the ability to combine references does not make the combination or modification obvious, i.e., the mere fact that references may be modified

or combined does not make the modification or combination obvious unless the prior art suggests the desirability of the modification or combination. In re Fritch F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). Moreover, while a motivation to combine may be found in the prior art implicitly or explicitly, the showing of combinability must be clear and precise. In re Dembiczak 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

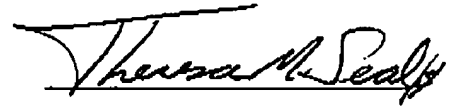
4. Because Read explains at length the characteristics of the specific digital thermometer used as the sensing module, it is not at all obvious to arbitrarily plug in, as it were, the capillary bulb thermostat of Finnegan that is mentioned in Finnegan as a general alternative for thermal sensors. Given the specificity of the entire Read disclosure, it is not obvious that the Read would want to or desire to incorporate the Finnegan capillary bulb thermostat. Thus, Applicant argues that this is an improper, arbitrary and suppositious combination of references – an ad hoc combination as it were devoid of any showing as to why Read would even want to incorporate the Finnegan alternative in Read's system. As a result, Applicant respectfully requests that this combination of references be withdrawn.

5. In paragraph 3 the Examiner combines the test switch of Boyd with Read/Finnegan to argue that (now canceled) claim 3 is rendered obvious and therefore unpatentable. Again, Applicant can't help but note that the combination of Boyd's test switch with the Read/Finnegan combo reference is constrained and ad hoc. It ostensibly appears that the Examiner has merely searched the prior art to find the disclosure of test switch, and after finding this element has combined it with a later reference to render the test switch as disclosed and claimed by Applicant unpatentable. The arguments set forth

by Applicant in paragraphs 2 – 4 apply to this putative combination. The Read reference is 20 years later than the Boyd reference, and yet nowhere does Read mention a test switch. This is noteworthy as Read's disclosure is particularly precise as to the electrical circuitry of Read's system. Presumably Read had the Boyd reference before himself, yet Read did not see the need to include a test switch in his system. If Read did not see the need to include a test switch then it is purely and highly conjectural, at the very least, for the Examiner to presume a combination unmentioned and undisclosed by the inventor, i.e., Read. The Examiner's assertions regarding this combination are purely and wholly conjectural hindsight, and the brief remark regarding the reason for the combination – to improve safety – is the Examiner's reason; it is not a reason, implicit or explicit, that is found or stated in either Read or Finnegan. Therefore, Applicant respectfully requests that the combination of references for finding Applicant's test switch unpatentable be withdrawn as the combination is ad hoc and unsupported by any suggestion, teaching or disclosure in the Read or Finnegan references.

6. In view of all of the above arguments, Applicant argues that new claim 5 is patentably distinguishable over the cited references, taken singly or in combination. Specifically new claim 5 recites a protective sleeve interposed between the lid and one sidewall of the refrigeration unit, and through which a length of the capillary tube passes thereby protecting the capillary tube and preventing it from being damaged when the lid is closed. Applicant has made a good faith effort to meet and overcome the Examiner's rejections, and no new subject matter has been added by this amendment. Therefore, Applicant respectfully requests that new claim 5 be allowed and that the case pass to full issuance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Theresa M. Seal". The signature is written in a cursive style with a horizontal line underneath the name.